

ST 97-3

Tax Type: SALES TAX

Issue: Books and Records Insufficient
Exclusion of Evidence/Failure To Comply With Sec. 446
Disallowed General Deductions

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
)	
v.)	IBT #
)	
TAXPAYER)	Barbara S. Rowe
Taxpayer)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Thomas V. Hoehne for TAXPAYER.

Synopsis:

This matter comes on for hearing pursuant to the timely protest of TAXPAYER (the "Taxpayer") of two Notices of Tax Liability dated June 9, 1995 in the amount of \$19,085.00 including penalties and interest. The basis of the notices was an audit of the taxpayer's sales account for the period of July 1, 1991 through December 31, 1994, done by a comparison of similar businesses. At issue is the question of whether the Illinois Department of Revenue (the "Department") correctly assessed the amount of the deficiencies against the taxpayer. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:

1. The *prima facie* case of the Department, inclusive of all jurisdictional elements, was established by the admission into evidence of two Audit Correction and/or Determination of Tax Due documents showing a liability

of \$15,862.00 for tax and penalties for July 1991 through December 1994. (Dept. Ex. No. 1)

2. The Department issued two Notices of Tax Liability to the taxpayer. Notice of Tax Liability number XXXXX, issued on June 9, 1995, was in the amount of \$16,143.00 including tax, penalties and interest for the period of July 1, 1991 through November 30, 1993. Notice of Tax Liability number XXXXX, also issued on June 9, 1995, was in the amount of \$2,942.00 including tax, penalties and interest for the period of December 1, 1993 through December 31, 1994. (Dept. Ex. No. 2)

3. The liability was established based upon the returns that the taxpayer filed and a comparison of those returns to records of two similar businesses in the same location. (Tr. pp. 15-17, 32-34)

4. The Department made repeated attempts to obtain books and records from the taxpayer. (Dept. Ex. Nos. 5-9; Tr. pp. 23-30)

5. The taxpayer did not file income tax returns for the periods in question. (Tr. pp. 22-23)

6. The taxpayers have an accountant who helps and assists the taxpayer with the preparation of the tax returns. (Tr. pp. 9-10, 13-14, 27-28, 39-41)

Conclusions of Law:

The Retailer's Occupation Tax Act, 35 **ILCS** 120/1 *et seq.* imposes a tax upon persons engaged in the business of selling at retail, tangible personal property... 35 **ILCS** 120/2.

It is presumed that all sales of tangible personal property are subject to tax under the act and the burden is on the taxpayer to prove that a transaction is not subject to tax. Taxpayers are required to keep adequate books and records of all sales. See 35 **ILCS** 120/7; 86 Admin. Code ch. 1, Sec. 130.801 *et seq.*

The taxpayer contends that the auditor incorrectly determined the liability. The Department repeatedly requested all of the taxpayer's

documentation to substantiate sales, to no avail. The Department then corrected the returns according to its best judgment and issued the Correction of Returns. A Correction of Return/Determination of Tax due is *prima facie* correct and the burden is on the taxpayer to rebut that presumption. 35 ILCS 120/4; A.R. Barnes & Co. v. Department of Revenue, 173 Ill.App.3d 826 (1st. Dist. 1988) In order to overcome the presumption of validity attached to the Department's corrected returns, the taxpayer has to produce competent evidence identified with books and records to show that the Department's returns are incorrect. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968); Masini v. Department of Revenue, 60 Ill.App.3d 11 (1st. Dist. 1978) Oral testimony, standing alone, is not sufficient to overcome the *prima facie* correctness of the determinations of the Department. A.R. Barnes supra. In this case, the taxpayer has failed to rebut the *prima facie* case of the Department.

It is therefore recommended that the Director uphold the Notices of Tax Liability numbered XXXXX and XXXXX in their entirety.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
January 21, 1997